THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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WRIT PETITION NO.16632 of 2006

7th September 2006

Between:

1. The State of Andhra Pradesh, rep.by its Secretary to Government, Panchayat Raj and Rural Development Department, Secretariat, Hyderabad.

And one other.

...PETITIONERS

AND

T.Kamalakar, S/o.T.Venkataiah, Deputy Executive Engineer,RWS (PR) Circle, Khammam.

...RESPONDENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.16632 of 2006

ORDER: (Per the Hon'ble Mr Justice Ramesh Ranganathan)

Heard both the sides and at their request, the Writ Petition itself is taken up for final disposal at the stage of admission.

The main question, which arises for consideration in this Writ Petition is as to whether the Andhra Pradesh Administrative Tribunal, Hyderabad ('the Tribunal' for brevity), was justified in directing that the respondent-applicant's case be considered for promotion to the post of Executive Engineer, without reference to the criminal case filed against him as per the law laid down in ***State of Punjab v. Chaman Lal Goyal***[1]. The Tribunal took note of the fact that the O.A. was admitted on 13.07.2005, that in spite of several opportunities being given to the respondents earlier, no counter affidavit was filed and that on 27.01.2006 a docket order had been passed that in case no counter was filed on the next occasion, the right to file counter would stand forfeited. The

Tribunal also recorded that the case was taken up on 28.02.2006, that the Government Pleader had sought further time for filing counter and as the right to file counter already stood forfeited, further time for filing counter was declined. The Tribunal recorded that, while an ACB trap was laid on 22.06.2000, on Sri T.Sudarshan Reddy, the Assistant Engineer working under the control of the respondent-applicant, till date, the criminal case had not been finalized. The Tribunal held that consequently, the respondent-applicant could not be denied the benefit of consideration of his case for promotion to the post of Executive Engineer merely on the ground that the criminal case initiated in June 2000 was still pending.

Learned Government Pleader for Services II would submit before us that, while it was true that no counter affidavit was filed for a period of nine months, the Tribunal had failed to take into account the executive instructions issued by the Government in G.O.Ms.No.257 General Administration (SER.C) Department dated 10.06.1999. Learned Government Pleader would submit that the executive instructions issued by the Government would disentitle

the respondent-applicant from being considered for promotion since cases of employees, who were charged of offences involving moral turpitude, misappropriation, embezzlement and other grave charges were to be excluded from being considered for promotion.

Learned Government Pleader would submit that, for failure on the part of the officers responsible in not filing the counter affidavit, disciplinary action had been initiated, that charge memos dated 25.08.2006 were already issued, and that a Liaison Officer had been appointed to monitor all Court cases and liaise with the Government Pleaders in the Tribunal, in the High Court and other Courts to avoid such lapses in future.

Sri J.R.Manohar Rao, learned counsel for the respondent-applicant, on the other hand, would submit that ACB Trap was not against the respondent-applicant but against the Executive Engineer and it was solely on the basis of his self-serving testimony that the respondent-applicant was needlessly implicated in the criminal case. Learned counsel would submit that, whatever may be the executive instructions in this regard, the law laid down by the Apex Court in ***State of Punjab v. Chaman Lal Goyal*** (1 supra) was

binding on the Government and that no executive instructions could be issued contrary to the law laid down by the Apex Court in the said judgment.

It is necessary to note that the Apex Court, in ***State of Punjab v. Chaman Lal Goyal*** (1 supra), held that the Court has to balance and weigh several relevant facts and determine, in each case, whether the right to speedy trial had been denied and, on weighing the pros and cons, an order was required to be passed as to whether the employee's case should be considered for promotion pending the criminal case. Except for the fact that the criminal case, against the respondent-applicant, is pending for more than five years, none of the other relevant factors have been taken into consideration by the Tribunal while issuing the aforesaid directions. It is true that, in the absence of a counter affidavit being filed, the Tribunal could not have been aware of the executive instructions issued by the Government in G.O.Ms.No.257 dated 10.06.1999 nor could it have denied consideration of the respondent-applicant's case for promotion in the absence of any pleadings or evidence on record regarding such executive instructions governing the field.

The fact, however, remains that the decision of the Supreme Court, in ***State of Punjab v. Chaman Lal Goyal*** (1 supra), required the Tribunal to take into consideration, several other factors, and not merely the fact that the criminal case was pending for a long period of time. Since this Court, in exercising its jurisdiction under Article 226 of the Constitution of India, is required to act in furtherance of larger public interest, and public interest requires that in cases where grave and serious allegations of misappropriation are levelled against a government servant, all relevant factors must be taken into consideration before an order is passed directing that the case of the said employee be considered for promotion. The contentions of Sri J.R.Manohar Rao, learned counsel for the respondent-applicant, that the respondent-applicant was needlessly implicated in the criminal case are again matters for consideration of the Tribunal. Whether the executive instructions issued by the Government in G.O.Ms.No.257 dated 10.06.1999 would apply in the light of the judgment of the Apex Court in ***State of Punjab v. Chaman Lal Goyal*** (1 supra) is also required to be considered by the Tribunal. While taking note of the fact that disciplinary action

has been initiated against the officers responsible, for the failure of the petitioners herein to file a counter affidavit before the Tribunal, it cannot however be lost sight of that the respondent-applicant has suffered prejudice on account of the indifference of certain Government Officials in failing to file the counter affidavit within the time stipulated by the Tribunal. We consider it appropriate, while setting aside the order of the Tribunal and in affording another opportunity to the petitioners herein to file their counter affidavit before the Tribunal, to impose exemplary costs on the petitioners of Rs.5,000/- (Rupees five thousand only). This amount shall be paid to the respondent-applicant and it is only thereafter that the Tribunal shall receive the counter affidavit filed before it by the petitioners herein. We make it clear that these directions are being issued in the peculiar facts and circumstances of the present case and that our order cannot be construed as enabling parties before the Tribunal to file their counter affidavit whenever they chose or to claim that the Tribunal should, as a matter of course, grant them indefinite extensions to file their counter affidavits.

Learned Government Pleader for Services II would submit that

the petitioners would pay the sum of Rs.5,000/- (Rupees five thousand only) to the respondent-applicant within two weeks from today and that the counter affidavit would be filed in the O.A. within one week thereafter. We consider it appropriate to direct the Tribunal to hear and dispose of the O.A., as expeditiously as possible, not later than one month from the date of receipt of a copy of this order.

The Writ Petition is disposed of accordingly. However, in the circumstances, without costs.

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(B.PRAKASH RAO, J)

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(RAMESH RANGANATHAN, J)

7th September 2006
RRB

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[1] (1995) 2 SCC 570